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John S. Knight Institute for Writing in the Disciplines

Document Title: Medieval Moot Court

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Fall 2009 James F. Slevin Assignment Sequence Prize Application

~Please Print Clearly~

Instructor's name Thomas McSweeney
Department Hist Course # and title Hist 1115, Magna Carta: Defender of Individual Rights

Should I win a prize, I give the John S. Knight Institute permission to publish, quote from, and/or distribute copies of the assignment sequence, and to distribute publicity to newspapers and other publications, local and/or national, about my winning the prize. I also grant the Knight Institute permission to deposit the assignment sequence in a web accessible archive and make it available under a creative commons attribution, non-commercial license. I am prepared to send electronic versions of my text to the Knight Institute (knight_institute@cornell.edu). I understand that I will receive the award for my prize-winning essay upon submission of the electronic text.

Medieval Moot Court
Title of Assignment Sequence
Instructor's signature Thomas McSweeney Date 12/11/09

Thomas McSweeney
Fall 2009 Semester

Assignment Sequence Title: “Medieval Moot Court”

Assignment Sequence Components:

- 1) Assignment 4: Peer Review
- 2) Assignment 5: Legal Brief
- 3) Assignment 6: Oral Argument
- 4) Assignment 7: Law Report

Class Handouts Attached:

- 1) Assignment Sequence: Medieval Moot Court (includes legal brief instructions)
- 2) Assignment 4: Peer Review
- 3) Assignment 6: Oral Argument
- 4) Assignment 7: Law Report

Rationale:

From week 8 to week 14 of the semester, I asked my students to imagine they were lawyers in three different time periods. They were to argue an appeal based on Magna Carta. I structured this assignment sequence like the moot court competitions I was familiar with from law school: each student had to write a brief and then present an oral argument as part of a team of three lawyers. My goals were first to teach my students that different audiences have different expectations. The assignment sequence accomplished this by requiring them to produce several pieces of writing based on essentially the same material, but in different genres: a legal brief, an oral argument, and a case report. Second, to reinforce what they learned about developing a thesis, crafting topic sentences, and using evidence by assigning them a paper in the format of a legal brief, which requires these elements to be marked very clearly. Third, to synthesize what we learned in the first half of the course about Magna Carta and the process by which it

became wedded to the classical liberal tradition. Coming into the course, my students were all most familiar with the Whig narrative of Magna Carta—that this document was part of a continuous upward trend towards greater liberty that started in the Middle Ages and that has seen its culmination in Anglo-American democracy. This assignment sequence helped them to see that alternative narratives are available by taking back to the 13th, 17th, and 18th centuries and use the discourses that would have been available to talk about Magna Carta at the time.

I had hoped that this assignment sequence would integrate writing, history, and law in a way that would give my students some room for creativity. I was unprepared for just how much they would internalize.

Description:

Up to fall break, the course assignments consisted of history essays on Magna Carta and on secondary readings relating to Magna Carta. I wanted to give the students a feel for the ways that Magna Carta has been interpreted and re-interpreted over the past eight centuries. We read, talked, and wrote about the discourses of liberties and custom that people used to talk about Magna Carta in the 13th century, its elevation to a constitutional document and its connection to the Lockean tradition of fundamental rights in the 17th, and its use by the American revolutionaries in the 18th. In medieval moot court, we returned to these ideas in a new context. I assigned each student to a case that implicated Magna Carta. I wrote three cases that took place in the 13th, 17th, and 18th centuries. I tried to make these cases plausible, yet not so complex that a first-year college student could not understand them. My students had to use the discourses

appropriate to the time period in their appeals, which I hoped it would help them appreciate that these discourses are not just disembodied ideas that have no effect outside of the realm of political philosophy; these discourses have had a real effect on real people.

I also wanted to give them practice with writing to different audiences and for different purposes. For the first half of the course the genre was largely “history essay” and the audience was largely “history instructor.” For this assignment sequence, they essentially had one set of material through the entire sequence—the facts of the case and the arguments they constructed around them. They had to take that material, though, and prepare three very different pieces of writing. First, they had to write a legal brief; second, an oral argument; and third, a law report. I wanted them to learn that writing changes when one’s audience, purpose, and genre change, but also, and just as importantly, that there are many lessons that apply across disciplines.

We began the sequence after fall break. In the class immediately after fall break, I combined lecture, discussion, free writing, and group work to prepare the students to think about the issue of audience in their writing. I introduced the sequence with a short lecture on the legal profession in the Anglo-American tradition from the 13th century to the present, so my students would understand the part they were being asked to play and the audience they were being asked to reach. We followed this with a brief free writing exercise about how and why a legal brief—the first assignment in the sequence—might look different from a history essay. I find that free writing often helps discussion because the students already have some thoughts written down. This gives them confidence to speak up in class. We thus used the students’ thoughts from their free writing to start a

class discussion on the role of audience in one's writing, how the audience for a legal brief might differ from that for a history paper, and how the legal brief should be different from a history paper to reflect that difference in audience. The students did very well with this. They pointed out, for instance, that a thesis and topic sentences are common to both history papers and legal briefs, but that they should perhaps be more explicitly marked in a legal brief because the judges who read them have very little time to spend on each case and will often want to be able to find the answers to their questions quickly. The style of reading—skimming for key points followed by in-depth reading of anything the judge finds particularly difficult—will therefore dictate the style of writing. I then divided them into six groups, plaintiff and defense for each side, and asked them to discuss the questions their cases presented to give them a start on developing their theses.

For the following class, October 20th, I assigned excerpts from Richard K. Neumann's *Legal Reasoning and Legal Writing* on the format of a legal brief and used it as the basis of a class on writing a brief. I gave them a short lecture on the format for a legal brief, emphasizing the parts of the brief that I thought would be helpful for writing across disciplines. For example, I had taught them to think about the thesis as having three levels: topic, question, and answer. I have found that it helps to think about constructing a thesis this way because I see so many "theses" that stop short of actually making an arguable claim. Students often do not understand coming into college that "Magna Carta is an interesting topic" (topic) or "Why was Magna Carta written?" (question) is not actually a thesis, but a step towards a thesis. I teach my students to start with a topic, ask a question about that topic, and then answer that question. The answer is then generally a good working thesis that may still change as the student writes the paper,

but that at least provides something to work with. While the topic and the question parts of the process are usually only implicit in a history essay, the legal brief contains a “question presented” section in which the writer must spell out the question in a sentence or two. Because the question is explicitly spelled out in the paper, this style encourages the writer to formulate the question in a way that persuades the reader. We discussed how setting the scope of your question will, to some extent, determine your answer, and it is something to be aware of when producing any piece of writing.

They had a little over a week to produce a rough draft of the brief (from Tuesday of week 8 to the following Thursday). They handed one copy to me and one copy to a student who was working on the same trial, but for the other side. I asked them to read and comment on each other’s papers as their fifth assignment, the peer review. This assignment served a dual purpose. First, it gave them the opportunity to see the types of arguments they would be up against when they reached the oral argument stage of the assignment sequence so they could incorporate counter-arguments into their writing. We talked about how constructively engaging with a counter-argument might cause one to modify one’s own theory. Second, it gave them a chance to review each other’s writing. I asked them to consider the elements of writing we had discussed up to that point in class, choose the two or three areas in which they thought the writer could improve, and write a letter to that person giving specific advice. I felt that this would not only help the person being reviewed to write a better paper, but would also require the reviewer to think about what is most important in writing and to internalize some of the things we had learned about writing over the course of the semester.

I felt they were ready to review each other's work at this point in the semester because they had had practice with short, in-class peer review exercises, often targeted at a specific aspect of writing, in the first half of the course. I have to admit, though, that I was a bit apprehensive about what they would say to each other. I was not at all sure that they would give each other good advice and I felt great trepidation at the thought of letting go of the reviewing process. That is why I asked each student to hand in two copies of his or her draft. I could compare the reviewer's comments to the paper that reviewer had read and I could give the students comments of my own if I felt that the peer reviewer's comments had been unhelpful or counter-productive. My fears were unfounded, though. While one or two students gave comments that I felt were somewhat superficial, the rest were excellent. The students had obviously been extremely conscientious about reading each other's papers and responding thoughtfully. This experience convinced me that, if anything, I should assign more peer reviewing in future classes, since it has the double educational benefit of helping the reader and the writer.

They had from Thursday, October 22nd to Tuesday, October 27th to finish their peer reviews and get them back to the authors. On that Tuesday, I asked them to exchange peer reviews, read them, and then talk to each other about their papers. I went around the room and helped to facilitate the conversations, which seemed to go very well.

The final copy of their brief was due on the following Tuesday, November 3rd. On that day, we started the next phase of the assignment sequence, and the one that turned out to be the jewel of the course: assignment 6, the oral argument. I explained to my students that the context in which you plan to deliver a piece of writing will determine how you write it and then asked them to consider how a piece of writing—

containing essentially the same material that their legal briefs contained and pitched to the same audience—would look different if it was being delivered orally rather than in writing. I played for them an audio recording of a portion of an oral argument before the U.S. Supreme Court and asked them what they thought the speaker did especially well and how it would stack up against written delivery. They did a very good job of critiquing the speaker. They pointed out that he made his most important points clear at the very beginning of the speech, used less complex grammar than one would generally use in a paper, and repeated important points. They also made good comments about the speaker's tone, which was respectful to the judges, yet confident, more in the style of an academic conversation than a lecture. My students would later do an excellent job of maintaining this type of tone, and I think the exercise was well worth it.

For the remainder of the class on November 3rd, I asked them to break into their teams of three, read each other's briefs, and decide which arguments they thought were the most important. I wanted to make sure that they had plenty of time to discuss their strategy, so I gave them class time to work on their arguments on November 5th and 12th, as well.

We held the trials on November 17th and 19th. I had hoped to reserve the moot court room at the law school for the arguments, but unfortunately, it was not available during class time, so we rearranged the tables in the classroom into a judicial bench, a speaker's podium, two tables for counsel, and the "crib," the area of the courtroom where law students would sit and observe. I invited my peer mentor, Eliza Buhrer, to sit in as a guest judge. Since we were not in the moot court room, I gave them the courtroom feel by wearing a red robe and a 16th-century judge's cap.

I could not have imagined how well my students would prepare or how seriously they would take this assignment. They were in it to win. As part of the moot court exercise in law school, the judges ask questions of the speakers, and Eliza and I tried to ask one or two questions of each student. The first speaker impressed us both when, in response to our first question, he said “that’s true, your honor, but chapter 40 of Magna Carta says...” and proceeded to explain to me how chapter 40 of Magna Carta dealt with my objection. Students had anticipated counter-arguments and had prepared answers for them. The students did such a wonderful job preparing for these trials that they were actually fun to watch.

At any given time, only six students were engaged in a trial, but I wanted the rest to be active participants in the trial even if they were not arguing their case at that moment. I designed assignment 7, the law report, to make them active participants in the process. Law reports were short records of the arguments made by the lawyers and the judges in court cases from the 13th to the 19th century. Since law reports were essentially notes taken by students and for students, I hoped the skills required for this assignment would transfer directly to their own college experience. I hoped that this would help the students hone their note-taking skills, helping them to become active listeners who can decide which parts of an oral presentation—like a lecture—are most important. This assignment also gave the students another opportunity to re-mold this same material for a third audience with entirely different expectations.

To prepare them for these law reports, I gave a short lecture on the history of law reports in class on November 12th. We also looked at examples of law reports from the 13th century and the 17th century and discussed the stylistic conventions of these student

notes from past centuries. For example, the 13th-century law reports are written in the form of a verbatim record of the dialogue in court, but clearly do not record all that was said, forcing the student to choose what is most important and write it out as if it is a dialogue.

This sequence taken together not only gave the students an opportunity to be creative in their writing about Magna Carta, to break out of the genre of “history essay” and write for some imagined audiences; it also highlighted the discourses about Magna Carta that we had been talking about all semester. The brief and the oral argument were intended to give them in-depth knowledge of the discourses about Magna Carta in one time period. The law report was intended to make them familiar with the discourses about Magna Carta in the other two time periods we were studying. One of my students later told me that he felt that treating Magna Carta as a living text in this way was “the best way to learn about Magna Carta.”

We held a trial recap on the Tuesday before Thanksgiving. This was when I saw the light bulb go off in most of my students’ heads indicating that they had learned and internalized far more than they had thought about writing and about Magna Carta. I asked my students to free write for ten minutes on two questions, which we had discussed before they began this assignment sequence, to see if their ideas about writing had changed. First, I asked them to write about the ways the legal brief differs from the history essay; second, on the ways the oral argument differs from the legal brief. I was very pleased to find that they had gotten the point: that the legal and historical styles of writing have much in common. One student told me later that about halfway through his free writing he realized that everything he had said made the legal brief different from the

history essay was actually something that would make a good history essay. The “question presented” in the brief is the question you are trying to answer in the essay. The “brief answer” is the thesis. The full-sentence section headings are topic sentences. The law-fact-application format is very similar to the way historians use and interpret evidence. The legal brief merely highlights these elements of a good history paper in a way that allows the student to see them more clearly. We moved on to discuss what we learned about the discourses about Magna Carta and the students were able to construct a narrative for the course from their experiences in these three trials, a story about how Magna Carta became a constitutional document and came to be associated with classical liberalism.

In their final conferences, my students have universally said that medieval moot court was their favorite part of the course. They did much more than have fun, though. On the final day of class for the semester, one of my students summed up precisely what I wanted the class to get out of our study of the competing discourses about Magna Carta. He said that we define ourselves by our history. When we know only one historical narrative—e.g., the Whig narrative—we allow someone else to shape us. When we know about and understand alternative narratives, we can choose how we will shape ourselves. We can shape ourselves with our history just as we can with our writing. That my students would take that lesson away from this assignment sequence exceeded all of my expectations for the course.

Assignment Sequence: Medieval Moot Court

The assignment sequence for the second half of the course will involve a mock trial in which you will make an argument based on

You are a lawyer in one of three time periods (13th-century England, 17th-century England, or 18th-century America). You will have to make an argument based on Magna Carta to win your client's case. The first step in this process is to prepare a brief to present to the judges hearing your case. Since these cases are appeals, the facts of the case have already been established. You need to argue that, based on those facts, the law says that your client should win.

This brief will require some research. You shouldn't argue your case in a vacuum. You should use the types of language that people at the time would have used to debate Magna Carta. This does not mean that you should just convert all of your s's to f's, quote extensively in Latin, and use words like "forsooth." It means that you should imagine that you're writing in a particular historical context and make the types of arguments about Magna Carta that people at the time would have made. For instance, if a person arguing against royal power in your period would have discussed Magna Carta in terms of the ancient constitution, you should discuss Magna Carta in terms of the ancient constitution.

A **draft of your brief** will be due on **Thursday, October 22nd**. We will discuss how to write a brief and how it is different from other types of writing you have done before the due date.

A **peer review (assignment 4)** of another student's draft will be due on **Tuesday, October 27th**.

Your **final brief (assignment 5)** of 5-6 pages will be due on **Tuesday, November 3rd**.

After you have completed your briefs, you will work in teams of three to prepare for oral arguments. A speech, which you will deliver in **oral argument (assignment 6)** will be due on **Tuesday, November 17th**. We will have trials on November 17th and 19th. We will discuss this more fully as we get closer to it.

Finally, you will produce a **law report (assignment 7)** for one of the two trials you are not participating in directly. This will be due on **Tuesday, November 24th**. Again, we will discuss the specifics of this piece of writing when we get closer to it.

This assignment sequence is meant to help you think through the ways people have interpreted and appropriated Magna Carta to serve their own interests. You will be thinking in-depth about the types of language people have used at various times to describe what we would call “rights.” You will thus take what we have learned in the first half of the course and apply it to these fictional cases.

This assignment is also intended to give you an opportunity to think about how we write differently for different purposes and audiences. A legal brief has different conventions from a history class essay or a book review because you are pitching your ideas to a different audience (judges rather than history professors), using different methods of analysis, and speaking in a different voice. When you write your oral argument, you will be writing for the same audience as for the brief, but your style of writing will change because the method of delivery will change.

Case 1: On the roll of Martin of Patishall of the eyre of Lincolnshire in the third and fourth years of King Henry, the case of John Farmer and the Abbot of Croyland

The year is 1218. The king’s justices are sitting in eyre in the county of Lincolnshire. John Farmer has brought a writ of novel disseisin before the justices claiming that “The Abbott of Croyland disseised him of his free tenement at Blackacre unjustly and without judgment.” The prior of Croyland, Peter Deacon, appeared on behalf of the abbot, Ranulph d’Avarice, and admitted that the abbey had ejected John from his land without any judgment in the abbot’s court, but claimed that John was not entitled to recover his land by the writ of novel disseisin because he was a villein. John vehemently denied the charge that he was a villein. The justices called a jury of men from John’s manor who were sworn to reveal the truth of whether John was a villein or a free man. The jury answered that John was indeed a villein, but not the villein of the abbey. His is instead the villein of Henry Bonseigneur, the lord of a manor near the abbey’s lands. John had sought and obtained permission from Henry and from Ranulph’s predecessor, Richard le

Pieux, to marry Alice, a free woman who inherited Blackacre from her father. Thus, although John is himself a villein, Blackacre is a free tenement.

Peter claimed that John, as a villein, had no right to appear in the king's court. John claimed that, since he held from the abbey as a free tenant, he should be in the position of a free man as against the abbey, even if he would not be against his own lord. The justices, realizing that this case could not be settled without further debate on the points of law, adjourned the case until after the octave of Easter and ordered the parties to appear at Westminster prepared to argue their cases.

Appearing for the Demandant: [student names]

You are a Lincolnshire knight who has gained a reputation for knowledge of the law and for being able to tell a good *conte*, or story, in court. Your much wealthier neighbor, Henry Bonseigneur, visited recently and told you that the abbey has disseised one of his villeins. Although Henry has no control over Blackacre, since John holds it from the monastery, Henry has an interest in seeing his own villeins prosperous. He wants John Farmer to retain Blackacre and he wants you to use your legal knowledge and your golden tongue to win this case.

You know Henry will be very grateful and will give you a fine gift—a robe, a ring, perhaps even a holy relic for your chapel—if you win his villein's case. As a local notable, you attended the county court last year when the young King Henry's charter of liberties was read out, the charter that confirmed the liberties granted by his late father, John. As a supporter of John in the recent war, you were never a big fan of the charter, but now it could be useful. The charter stated some dubious customs of the realm relating to villeins that might be of help to John Farmer. It also has something to say about taking land from tenants without judgment. It will be an uphill battle, but you might be able to make an argument from the charter.

Appearing for the Tenant: [student names]

You are a priest who spent enough time at Oxford University, a relatively new school, studying Roman and Canon law to convince people that they should pay you money to advise them. You took holy orders as a priest while you were at the university and you are currently the rector of a church near the abbey of Croyland, but you don't spend much

of your time there. You've hired a curate to say mass for you and you spend most of your time at the much more lucrative job of under-sheriff for the county, returning writs and enforcing judgments. You're hoping to move up in either the royal or the ecclesiastical service.

The abbot of Croyland approached you recently because he has a case he wants you to argue. You owe your rectory to his largesse; he essentially gave you this position so he could keep you on retainer in case the abbey, which is a large ecclesiastical corporation and constantly has to deal with legal issues, needed advice or even someone to argue on its behalf in court. The abbot laid out the facts of a novel case involving a villein and he asked you to appear on the abbey's behalf. This is your chance to prove that you're worth what the abbey has paid for you.

As under-sheriff, you were present at the county court last year when the sheriff read out the charter of liberties that the young King Henry's regents confirmed on his behalf. It occurs to you that your opponent may take advantage of the portions of this document that apply to villeins. But the liberties of lords and of the church are also prominent in the charter, and you think you can make a strong argument for the abbey from the charter of liberties.

Case 2: Dominus Rex & Salmon v. The Worshipful Fishmongers' Company

The year is 1611. A fight has broken out between the Worshipful Company of Fishmongers, one of London's oldest and most respected livery companies, and Sir Henry Salmon, Bt., a royal favourite who the king has raised from relative obscurity to a high position at court. A few months ago, the king announced to the court that he would be granting Sir Henry a monopoly on the sale of all of Sir Henry's namesake fish—the salmon—in the city of London. A dozen courtiers were summarily dismissed from the king's service when they failed to recognize that the king meant this grant of the salmon monopoly to a man named Salmon to be a very funny joke and laugh accordingly. Sir Henry received his charter "to have the sole right to import and sell salmon in the city of London, free from any inspection or tariff," very shortly thereafter and began to import salmon to the city.

When Sir Henry unloaded his first catch at the Billingsgate market, though, his agent, John Trout, was approached by a delegation from the wardens of the Worshipful Company of Fishmongers, who informed Trout that the company had held the right to

inspect all fish sold in the city of London, and to charge a fee for the inspection, since time immemorial. Trout refused the inspection, pointing out that his employer's royal monopoly on salmon contained a clause that specifically removed him from the company's jurisdiction to inspect. He also informed them that, since his employer now held the monopoly, the company could no longer sell salmon. The wardens once again insisted that Trout pay the fee and allow them to inspect his salmon. When he refused, they called upon half a dozen fish beaters to take Trout into custody under the company's ancient right, confirmed by royal charter, to imprison and try "any who violate this charter of the Ancient and Worshipful Company of Fishmongers." Trout considered resisting, but surrendered after a quick glance at the heavily tattooed and pierced fish beaters. He was imprisoned in the basement of fishmongers' hall. Trout was tried by the wardens and their court and sentenced to pay a fine of 5 pounds, but, since he refused, the company has kept him imprisoned.

Sir Henry, concerned for his monopoly—oh, and also his employee—brought suit against the Fishmongers' Company in the court of King's Bench, since the king's interests were at stake. The judge in the King's Bench, sympathetic to the Fishmongers, but eager not to be dismissed from his post, has punted to the Exchequer Chamber, a court composed of all of the judges of the three high courts—the King's Bench, the Common Pleas, and the Exchequer—to decide the legal issues.

Appearing for the Plaintiff: [student names]

You are an utter barrister of the Inner Temple who is a friend to the royal prerogative and who is hoping to move into royal service. So when Sir Henry Salmon approached you and asked if you would represent his interests in the case of *Rex & Salmon v. The Worshipful Fishmongers'* company, you were delighted to take a case that touched so closely on the royal interest and that would involve working with the attorney general. Salmon wants his monopoly confirmed, his servant released, and, if possible, he wants the court to find the company's power to arrest and imprison to be invalid.

You recall that the King's Bench decided a case having to do with monopolies a couple of years ago, *Darcy v. Allein*, which Sir Edward Coke, who was attorney general at the time, published in the second book of his *Reports*. That might be helpful to you, although, since Coke published it, it might be more helpful to the other side. Coke's celebrated opinion in *Dr. Bonham's Case* might be helpful to you, though.

At any rate, even though there are a few friends of the royal prerogative on the bench, you're going to have to appeal to the ancient constitutionalists to win. Some appeal to Magna Charta and all that medieval garbage will probably be necessary. How does one make a compelling argument for Sir Henry out of Magna Charta?

Appearing for the defendant: [student names]

Your father is a member of the Fishmongers' Company, and you yourself have become a freeman of the company, although you have no intention of becoming a fishmonger. Indeed, you have just recently been called to the bar of the Middle Temple and are now an utter barrister, free to practice in any of the king's courts except the Common Pleas. The company has approached you to work on their appeal. They want to protect the following rights: 1) the right to inspect all fish sold in the city, to charge a fee for inspecting the fish, and to deny the right to sell fish that they find to be of poor quality; 2) their right to "arrest, imprison, and try any who violate this charter of the Ancient and Worshipful Company of Fishmongers," and 3) the right to sell salmon, in spite of the king's grant of a monopoly that excludes them. The wardens of the company believe that the king and Sir Henry have violated their liberties, which they have had as far back as any records exist and which have been confirmed by royal charters in every century, and the liberties of the corporation of the city of London, of which their company is a part.

Sir Edward Coke will be sitting on the bench for these arguments, and you figure he's probably your best bet for a sympathetic ear. You've heard rumors that he's working on a book on Magna Charta that the king is none too excited about. Could an argument that appeals to the Great Charter sway him?

Case 3: *Rex v. Shields, Hogsbody v. Shields*

It is Virginia, 1768. James Shields is a popular, but irascible tavern-keeper in the colonial capital of Williamsburg, just down the street from the colonies' finest institution of higher education. At the last sitting of the assize, the local wigmaker, Elias Hogsbody, sued Shields for slander after Shields allegedly accused Hogsbody of using rat hair in his wigs (Shields was imbibing liberally in spirituous beverages when he allegedly made this statement). Shields offered a general replication to Hogsbody's complaint, but did not

affix the stamp affirming that he had paid the tax of one shilling and six pence required under the Stamp Act of 1765 for a pleading document in a case arising under Chancery jurisdiction. The judge, thinking that Shields had simply made a mistake, offered to delay the hearing of Shields' case until the next assize to give Shields time to acquire the necessary stamp, at which point Shields exclaimed "God damn the Stamp Act. I have my rights as an Englishman!" The judge ruled that since Mr. Shields refused to pay the tax on his replication, no answer to Mr. Hogsbody's claim had been filed, and awarded damages to Mr. Hogsbody by default. He then fined Mr. Shields ten pounds for his refusal to apply a stamp to his pleadings, in accordance with the Stamp Act.

The under-sheriff for the city of Williamsburg, Hezekiah Spottswood, who was in court returning writs at the time of Mr. Shields' case, became suspicious when he heard this, and looked more closely at the four-pound stamp on Mr. Shields' license for the retailing of wine and spirituous liquors. He found that not only were the words "four," "pound," and "stamp" all misspelled, but the picture on the stamp was not of the king, but instead a crude stick-figure drawing of Mr. Shields himself. When Mr. Spottswood confronted Mr. Shields about this at his tavern, Mr. Shields replied, in front of two constables and a room full of guests, "Yes, I forged it. I should have forged the stamp on my court papers, too! There ain't no parliament or king on earth that can charge a man for carrying out his livelihood!" Mr. Spottswood arrested Mr. Shields on the spot for forging the king's stamp, a felony that carries a penalty of death under the Stamp Act. Mr. Shields has been convicted by the assizes, but has obtained a stay of execution pending his appeal to the governor's council.

Appearing for the defendant: [student names]

You are a planter for the Tidewater region of Virginia who sits in the House of Burgesses and dabbles in the law and, since Patrick Henry is currently busy with an important case, Mr. Shields has asked you to argue his case before the governor and his council, sitting as a court of appeal. You and Mr. Shields are both strong proponents of the colonies' rights within the empire, and you want to strike a blow for liberty by challenging Mr. Shields' default judgment, fine, and conviction for forgery on the ground that the Stamp Act of 1765 is invalid and violates your rights as Englishmen. How on earth are you going to defeat an act of parliament, though?

Appearing for the plaintiff and the Prosecution: [student names]

You are a recent immigrant from England who has studied at Lincoln's Inn and knows the Common law inside out. The legal establishment in England didn't understand your genius, though, so you decided to go to the colonies, where you might be able to make a living. You are just starting up your legal practice. Business has not been great, so you've done something slightly shady: you have agreed to represent two clients in a related matter. Mr. Hogsbody has heard that Mr. Shields plans to appeal both the default judgment against him in the slander case and his conviction for failing to pay for the stamp. Hogsbody does not much care whether Shields goes to jail for violating the Stamp Act, but he wants his default judgment to stand, so he wants you to argue his case before the governor's council.

The very next day John Randolph, the attorney general of the colony, stepped into your office and asked you if you would argue the king's case, in favor of Shields' conviction, before the governor's council. You knew that in England, representing two parties with similar, but not identical, interests, wouldn't fly, but these are the colonies, where anything goes! And who else are they going to find in Williamsburg to defend the wildly unpopular Stamp Act? So you took the case.

You have an inkling that Shields and his rabble-rouser, revolutionary lawyer are going to argue that the Stamp Act violates some fundamental law and that you should tailor your argument to refute this argument. Besides, you're a firm believer in the sovereignty of the king and parliament over the colonies. But what fundamental law could possibly bind the king and parliament, especially with respect to the colonies?

Assignment 4: Peer Review, 1-2pp.

For this assignment, you will exchange legal briefs with someone from the opposing side. You will read your partner's paper and write a response to it.

The tendency in commenting on a paper is to immediately get out the red pen and mark it up as you go for grammar and spelling. It is generally more constructive to leave your pen aside while you are reading and instead take some time to think about the paper before you begin commenting, both because you get a sense of the whole paper before you comment and because, when you do mark up the paper first, your tendency will be to focus on spelling and grammar errors at the expense of structural problems.

When you do comment, I'd like you to write your comments in the form of a 1-2 pp. letter to the paper's author. Try to stick to the three or four things that they most need to improve on. Be specific in your advice. If the argument seems to skip a step in logic, tell the author what that step is. If the author's voice doesn't seem quite right, tell them what specific words and phrases they might change to fix that. If there is a particular spelling, grammar, or usage problem that the author repeats several times, you might also mark up the paper to give examples of how to fix it, but focus on the letter.

Reading and reviewing the writing of others is one of the best ways to think about our own writing. This exercise is designed to teach you to judge writing and figure out ways to improve it, something that will help you in your own revision process.

This writing project also gives you something most lawyers only dream of: a chance to look at your opponent's brief before he or she submits it. Take the opportunity to think about the arguments your opponent is using and to work counter-arguments to their most important arguments into your brief.

On the back of this sheet is a list of some examples of questions you might ask of your opponent's paper (and your own).

Please bring **two copies** of your peer review to class on Tuesday, October 27th. If you will not be able to make it to class, email your peer review to me and your partner by class time.

General thoughts

- What are the main strengths and weaknesses of the draft?
- Are there any mistakes that the writer makes repeatedly?

Questions Presented

- Does the author present only those facts which are absolutely relevant to the legal argument the author is going to make?
- Has the author written the questions presented in a way that persuades the reader that the rule he or she wants is the correct one?

Summary of Argument

- Has the author answered the questions presented? In a clear and concise way?
- Is the answer to each question stated in the form of a legal rule the author wants the court to adopt (this will be the author's thesis)?

Argument

- List the main points of the argument. How does each one support the thesis/theses (the answers to the questions presented) in the argument section?
- Which points (if any) should be eliminated? What points (if any) need to be added? Why?
- Is the argument appropriate to the time period or does the author make anachronistic arguments?
- Do the author's arguments follow the format found on p. 96 of *Legal Reasoning and Legal Writing*?

Cohesion and Coherence

- Are the ideas at the end of one sentence connected to the ideas at the beginning of the next? Are the ideas presented in one paragraph connected to those presented in the next?
- Does the author have strong topic sentences that explain what he or she will argue in each paragraph?
- Does the author place familiar information at the beginning of the sentence and new information at the end?
- Is the action in verbs rather than abstract nouns? Does the verb appear early in the sentence?

Quotations and Citations

- Does the author introduce and explain all of his or her quotations?
- Does the author cite any ideas that originate with someone else?

Assignment 6: Oral Argument, 5 min.

Each team of three will divide their argument into three issues. One member of the team will argue each issue. You should submit your three issues to me in writing by the end of class on **Thursday, November 5th**, so I can pair you up with someone who is working on a similar issue on the other side. You will have time in class to work on dividing your issues.

Different types of notes work for different people, so you may write your oral argument in any format that will be helpful to you when you are delivering it in class (note cards, outline, typewritten speech). You will hand in a copy of your oral argument at the beginning of class on **Tuesday, November 17th**. If you do use note cards, please hand in a typewritten version of your notes and indicate where the divisions are between cards.

There is no specific page limit for the oral argument, but you must prepare 4-5 minutes of material to deliver. You should practice your speech several times to make sure it falls within the time limit.

The rules of the oral argument will be as follows:

- Each speaker will have five minutes to speak. At the end of five minutes, you may ask the senior justice of the bench if you may have extra time (thirty seconds or less) to finish the point you are currently making.
- You may reserve one minute of your time for rebuttal if you wish. You should not use rebuttal to make additional points for your own side. Use it only to rebut your opponent's claims.
- The speakers will go in the following order:
 - 1) Appellant (person making the appeal), issue 1
 - 2) Appellee, issue 1
 - 3) Appellant, issue 1 rebuttal (must reserve time beforehand)
 - 4) Appellee, issue 1 rebuttal (must reserve time beforehand)
 - 5) Repeat process with issues 2 and 3.
- A judge may interrupt you at any time to ask you a question. Be prepared to return to your argument after answering the question
- You should address the bench respectfully and in a period-appropriate manner. We will discuss the proper way to address a judge in each time period before the class.

When your case is not before the bench, you will be playing the role of a law student sitting in the "crib." You should take extensive notes on the case in preparation for your law report, which we will discuss further in week 12.

Assignment 7: Law Report, 1-3pp.

Students in the 13th, 17th, and 18th centuries took notes just like they do today. Starting in the late 13th century, English law students circulated their notes in the form of law reports. The law report was a report of what happened in a particular case the student had observed in court. People collected these reports into volumes that you might think of as the 13th-century equivalent of the notorious sorority or fraternity “file,” although perhaps not as insidious.

You will each be observing two mock trials. For these trials, imagine you are a student of the Common law sitting in the “crib,” the area of the court reserved for students who wanted to watch and learn from the proceedings. Take notes on the two trials and ***choose one of them*** to write up in the form of a law report.

You should use the sample law reports I have provided to guide you in writing your report. If you are writing about the 13th-century trial, use the 13th-century reports as your guide. If you are writing about the 17th- or 18th-century trials, use Coke’s report. Read the reports carefully and ask yourself, “What are the elements that make a law report a law report?” What kinds of information do they contain about the procedure in the case? About the facts? Does the report appear to cover everything that was said and done in court, or are there things it leaves out and things it emphasizes? Are the arguments in court recorded verbatim, or summarized? Who is speaking? Lawyers? Judges? Is there a final resolution?

A note on reading the sample law reports: For the selections from Brand’s “Earliest English Law Reports,” you only need to read the report, not the part that is titled “record.” I have provided you with a scan of the Old French version of one of the reports. This is only so you can get a feel for what the original report looked like. For the selection from Coke, the text in the box at the beginning of the report is the editor’s commentary on the report, not a part of the report itself.

This assignment is meant to help you learn to take good notes. Not everything said in a lecture, or in a trial, is of equal importance. By looking at, discussing, and ultimately emulating student notes from the 13th and 17th centuries, I hope you will learn some tools for deciding how to distinguish between the key concepts that the professor hopes you will take away from a lecture and less important material.

This assignment is also yet another opportunity to think about genre and audience. The information you are presenting in the law report is essentially the same as that which your classmates are presenting in their oral arguments. But while your classmates are writing for oral delivery to a panel of judges, you are writing for an audience of students like yourself, who are trying to learn the law’s basic concepts from written texts. How will this affect the way in which you present the information?

This assignment will be due on **Tuesday, November 24th** at the beginning of class.